COMPREHENSIVE
CANCER CENTERS
OF NEVADA

Cody Phinney, Secretary
Nevada Board of Health
Nevada Division of Public and Behavioral Health
4150 Technology Way
Carson City, NV 89706

Dear Administrator Phinney and Ms. Pool,

On behalf of Comprehensive Cancer Centers of Nevada (CCCN), we would like to thank you for the opportunity to comment on R057-16, the regulation implementing Assembly Bill 42 from the 2015 legislative session relating to cancer registries.

The public health of Nevada is important to our practice and we share the Department's goal of fostering a healthier state. We commend the State for its efforts to achieve this goal through the acquisition of healthcare data. CCCN will continue to work with the Division of Public and Behavioral Health to provide information in a way that is efficient and effective, and provides data needed to help the citizens of Nevada.

We share the concerns of other providers that testified at the workshop in July, that the State will implement regulations that require a significant financial burden on independent practices that are not currently equipped to extract detailed levels of data from patient charts while maintaining patient confidentiality. We have seen examples in other states where, due to the amount of information required to extract, practices incurred nearly two hundred thousand dollars in annual expenses, often requiring the practice to hire additional full-time employees or contract the work out to a third party vendor. For example, in Texas, our affiliated practices hired a costly third-party vendor in their efforts to comply with the state statute. The vendor must manually screen and abstract each case once it has been identified as appropriate for their state's registry. In New York, our affiliated practice hired two full-time cancer registrars adding a significant cost to the practice. Some states have realized the potential burden such reporting requirements can have on independent practices and have created systems that meet the needs of both the state and providers. For example, Florida, permits practitioners to send their CMS Claims data electronically through a secure FTP file to the state, in lieu of separate reporting requirements.

Physician practices of all have sizes have taken a significant financial hit the last few years with decreased reimbursement and increased required compliance expenses. Given the financial changes many practices have experienced in the last several years, we hope the Division of Public and Behavioral Health will

work with Nevada practices to maximize the efficiency of the reporting, while minimizing the financial burdens on practices, both of which, we believe can be achieved while still fulfilling the intent of a comprehensive registry. Again, thank you for the opportunity to comment of these important regulations. Our practice looks forward to working with you as the implementation of the rules are finalized.

James Kilber

Executive Director
Comprehensive Cancer Centers of Nevada

Testimony for the Board of Health – R057-16 (NAC 457)

Madam Chair, Members of the Board, my name is Christine Pool and I am the Program Manager of the Nevada Central Cancer Registry in the Carson City Office of Public Health Informatics and Epidemiology within the Nevada Division of Public and Behavioral Health. I am here to provide testimony for the addition of Sections two (2) and three (3) in NAC 457 to comport with statutory changes made by Assembly Bill No.42 as well as recommended regulation changes for Sections 4 to 15 (NAC 457.010, 040, 045, 050, 053, 057, 060, 090, 110, 120, 140, and NAC 150).

The main purpose of the amendment is to improve compliance with cancer reporting requirements to prevent the uniform application of standardized data definitions and codes.

The proposed amendments will: 1) Re-align Nevada's regulations with updated national guidelines and recommendations, 2) improve compliance with cancer reporting requirements to avoid under-reporting, 3) ensure complete, timely, and quality production of cancer incidence data, and 4) improve data use for cancer control and prevention activities.

On June 9, 2016 a Small Business Impact Questionnaire was sent to licensed health care facilities, facilities that provide screening, diagnostic or therapeutic services, medical laboratories, and individual physicians in Nevada along with a copy of the proposed regulation changes.

On July 22, 2016, a Public Workshop on LCB File No. R057-16 was held in Carson City and Las Vegas via videoconference.

Until recently, complete and high quality cancer cases were reported through hospital cancer registries because cancer cases were primarily diagnosed and treated in a hospital setting. With advances in medicine, patients are often diagnosed and treated outside the hospital setting. Therefore, it is important that the registry ensures data are received from all reporting entities to reduce under-reporting of cancer cases in Nevada and to meet national cancer reporting standards.

The cancer reporting mandate as outlined under NRS 457.230 has been in effect since 1997 and applies to hospitals, medical laboratories, facilities that provide screening, diagnostic or therapeutic services, and physicians who diagnose or treat patients in respect to cancer. The reporting mandate is not unique to Nevada, many states adopted the same language from the Public Law Title 42 into their statute.

The standards and information that should be reported under current regulations only refers to health care facilities, medical laboratories, and physicians. Language was added to the proposed regulations to ensure information is captured from all required reporting entities as well as the format and timelines of data submission to the system. This regulation change will re-align Nevada with national reporting standards and ensure complete, timely, and quality production of cancer incidence data.

Overall concerns received through the Small Business Impact Survey and Public Workshop were related to over-reporting of information since it is received from multiple providers, providers felt they didn't fall within the reporting mandate, additional staff and cost to comply with the reporting mandate, release of patient identifiers, and the clarification of the administrative penalty which only applies to health care facilities as defined under NRS 457.020.

It is essential to the registry to receive various cancer reports on the same patient from multiple sources since all information is consolidated into one complete cancer abstract. I often refer to the cancer abstract as a puzzle, if any piece is missing, the puzzle is incomplete. Incomplete abstracts impose a huge burden on hospitals, providers, and the registry since additional information has to be researched and collected.

To reduce the cancer reporting burden on providers the registry has several reporting options. The registry system can receive data extracts from Electronic Health Record Systems, if that is not an option, paper abstract forms for the specific reporting entities are available. In addition, the Division has prioritized efforts related to electronic lab and provider reporting through the Health Information Exchange in Nevada. These efforts will streamline reporting for providers who are part of the exchange.

Comments were all taken into consideration during the regulation development. In certain cases, individuals contacted us in order to get a better understanding of the concerns the regulation posed and to answer any questions the individual had.

If you would like me to give a detailed description of the exact changes to each section, I can do that now.

IF YES- go to section details pg. 3

IF NOT- staff recommends the State Board of Health adopt the proposed regulation amendments to NAC 457 "Reporting Information on Cancer as found in LCB File No. R057-16. We do not feel that any further issues about these changes will be identified. Thank you for your time and consideration. We are available for any follow up questions you may have.

With your approval, I will detail the major changes to NAC 447 as outlined in LCB File No. R057-16 is as follows:

Section 2 – Addition to NAC:

- Adopts by reference the most current version of certain volumes of the Standards for Cancer Registries, the International Classification of Diseases for Oncology and the Facility Oncology Registry Data Standards (FORDS), and any subsequent revision of those publications that have been approved by the Chief Medical Officer for use in this State.

Section 3 – Addition to NAC:

- Establishes the amount of and the procedures for notice and appeal with regard to the imposition of an administrative penalty.

Section 4 – NAC 457.010:

- Removes the definition of "Malignant neoplasm".
- Expands the definition "Physician" to "Provider of health care" as ascribed to it in NRS 629.031.

Section 5 – NAC 457.040:

- Removes the list of neoplasms which must be reported and adopt by reference the neoplasms listed in the publications adopted in section 2, which include:
  - Neoplasms with a behavior code of in situ or malignant and
  - Any solid tumor of the brain or central nervous system including, without limitation, the meninges and intracranial endocrine structures with a behavior code of benign, uncertain malignant potential, in situ or malignant.

Section 6 – NAC 457.045:

- Specifies the neoplasms which are not required to be reported, which include:
  - Carcinoma in situ of the cervix uteri
  - Cervical intraepithelial neoplasia
  - Basal and squamous cell carcinomas of the skin
  - Prostatic intraepithelial neoplasia

Section 7 – NAC 457.050:

- Expands the reporting requirement from health care facilities to providers of health care and any other facilities that provide screening, diagnostic or therapeutic services.
- Establishes timelines when an abstract has to be submitted which is within six months after a patient is admitted, initially diagnosed with or treated for cancer or other neoplasms.
- Outlines the scope of the information abstracted to include information on cases of cancer and other neoplasms to be in conformance with the standards adopted by reference in section 2, which include:
  - Volumes I to V, inclusive of the Standards for Cancer Registries
  - Facility Oncology Registry Data Standards (FORDS)
- Establishes that the information has to be submitted on a monthly basis by using electronic means unless a waiver is filed with the Chief Medical Officer to wave the electronic submission requirement.

- If the standards for reporting are revised the provider of health care, the health care facility, or other facility that provides screening, diagnostic or therapeutic services has thirty days to conform to the revision unless the Chief Medical Officer objects to the revision.
- Authorizes the Division to abstract cancer cases if the provider of health care, the health care facility, or other facility that provides screening, diagnostic or therapeutic services fails to comply with the cancer reporting requirement, and charge the fee set forth in NAC 457.150 which is $250 per abstract.

Section 8 – NAC 457.053:

- Cancer was changed to cancer and "other neoplasms".
- Language was added "for each specimen which shows evidence of cancer or other neoplasms which are subject to reporting pursuant to NAC 457.040".
- Physician changed to "provider of health care".

Section 9 – NAC 457.057:

- This section originally listed the reporting requirements for physicians who diagnose or provide treatment to a patient with respect to cancer and other neoplasms. The reporting requirements are now included in section 7.
- Additions to this section set forth the limited information that a provider of health care who has directly referred or previously admitted a patient to a hospital, medical laboratory or other facility that provides screening, diagnostic or therapeutic services to patients with respect to cancer or other neoplasms is now required to provide to the Chief Medical Officer. Nevada has been under-reported and has failed to meet National standards due to missed or incomplete cancer abstracts. This information will assist the registry to obtain timely and complete data.

Section 10 – NAC 457.060:

- Language was added "providers of health care, health care facilities, other facilities that provide screening, diagnostic or therapeutic services to patients with respect to cancer and other neoplasms".

Section 11 – NAC 457.090:

- Physician changed to "provider of health care".

Section 12 - NAC 457.110:

- Physician changed to "provider of health care".
- Language was added "providers of health care, health care facilities, other facilities that provide screening, diagnostic or therapeutic services to patients with respect to cancer and other neoplasms".
- Language was added "one of those entities".

Section 13 - NAC 457.120:

- Language was added "medical laboratories or other facilities that provide screening, diagnostic or therapeutic services to patients with respect to cancer and other neoplasms".
- Language was added "one of those entities".
- Language was added ", and sections 2 and 3 of this regulation".

Section 14 - NAC 457.140:

- Physician changed to "provider of health care".
- Language was added ", and sections 2 and 3 of this regulation".
- Language was added to submit to the Chief Medical Officer or the designee for review and approval any proposed publication which is based on or contains information obtained from the registry.
- Notify the Chief Medical Officer if, at any time during the research project or before publishing any results, the applicant finds an increased risk or decreased survival for cancer as compared to other states in specific geographic areas or by identifying the person, so the Division may independently assess the validity of the finding before the material is published or released by the researcher.
- Include in any publication the following disclosure "The views expressed herein are solely those of the author and do not necessarily reflect the views of the Division".

Section 15 – NAC 457.150:

- Increases the fee imposed on providers of health care and facilities from $32 to $250 if the Division abstract cases from their medical records. If necessary, the Division needs to establish a contract with a Certified Tumor Registrar to abstract cancer cases from health care facilities. Revenue collected will support this contract.
- Language is removed to eliminate the $8 fee for each abstract prepared by the health care facility who abstracts from its own records.
- Increases the fee or actual cost for a medical researcher for data provided by the registry.

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August 31, 2016

Dear Nevada Board of Health Member:

I will be unable to attend the September 9 meeting of the Board, and ask that this letter be considered written public comment and ask that it be attached to the minutes of the meeting.

1. Enforcement of NAC 458.336.

In my testimony before the Board at its June meeting I asked the Board to put enforcement of NAC 458.336 on the agenda this meeting to remedy the problem of the Division of Public and Behavioral Health's ongoing failure to enforce it. I am disappointed to see that enforcement of NAC 458.336 is not on the agenda.

When consolidation of behavioral health and public health was being considered, a study was commissioned to identify the challenges to be addressed, "Comprehensive Gaps Analysis of Behavioral Health Services". This study identified the longstanding problem of lack of public supervision of State behavioral health services. With the consolidation of public and behavioral health under the Board of Health's supervisory authority (NRS 439.150), it appeared that public supervision of behavioral health had finally been attained by placing it under the supervision of a public body.

In practice, however, public supervision of State behavioral health services remains woefully inadequate. The Board has ignored citizen complaint of the Division's continuing failure to enforce regulation adopted by the Board and approved by the Legislative Commission.

2. Compliance with NRS 629.053 and NAC 629.050.

NRS 629.053 requires the State Board of Health and many other boards which regulate health care to post on their websites notice of procedures for destruction of health care records of persons less than 23 years of age. In 2011 the State Board of Health adopted NAC 629.050 requiring that the notice posted on board websites pursuant to this statute must be titled, "Notice to Patients Regarding the Destruction of Health Care Records."

The Board adopted regulation for what the website notice must be entitled, yet the Board's website doesn't have the requisite notice. I brought this matter to the attention of the Division of Public and Behavioral Health some time ago. The Board's website can be

viewed at http://dpbh.nv.gov/Boards/BOH/Board_of_Health_(BOH)_-_home/ .

3. Assignment to the Board of duty to provide oversight of behavioral health professional licensure.

The Governor's Office has submitted Bill Draft Request (BDR) #228 for a bill which "Establishes the State Board of Health as the regulatory oversight body for behavioral health occupational licensing boards." It appears that the Legislative Committee on Health Care is considering a similar bill, which would call for dissolution of the Board of Psychological Examiners, the Board of Examiners for Social Workers, the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors, and the Board of Alcohol, Drug, and Gambling Counselors. In the proposed bill the functions of each of those boards would be served by subcommittees of the Board of Health.

I encourage the Board to consider whether it would be able to meet this additional responsibility. I have pointed out to the Board on several occasions that with the integration of behavioral and public health in 2013 the Board was given the statutory duty to provide general supervision of all nonadministrative matters relating to State behavioral health services (NRS 439.150), yet the Board has yet to perform this duty. The Board has yet to receive, and has yet to request, any report to it regarding State behavioral health services. In addition, as pointed out previously in this letter, the Board appears to ignore citizen complaint of Division failure to enforce behavioral health regulation.

I encourage the Board to oppose legislation assigning to it the additional duty of providing overview of behavioral health professional licensing until it meets its current duty of providing overview of State behavioral health services.

Thank you,

Barry W. Lovgren

cc: Cody Phinney, Administrator, Division of Public and Behavioral Health
Legislative Committee on Health Care

Addendum

NRS 629.053 Disclosure on Internet website by State Board of Health and certain regulatory boards concerning destruction of records; regulations.

1. The State Board of Health and each board created pursuant to chapter 630, 630A, 631,632, 633, 634, 634A, 635, 636, 637, 637B, 640, 640A, 640B, 640C, 641A, 641B, or

641C of NRS shall post on its website on the Internet, if any, a statement which discloses that:

(a) Pursuant to the provisions of subsection 7 of NRS 629.051:

(1) The health care records of a person who is less than 23 years of age may not be destroyed; and

(2) The health care records of a person who has attained the age of 23 years may be destroyed for those records which have been retained for at least 5 years or for any longer period provided by federal law; and

(b) Except as otherwise provided in subsection 7 of NRS 629.051 and unless a longer period is provided by federal law, the health care records of a patient who is 23 years of age or older may be destroyed after 5 years pursuant to subsection 1 of NRS 629.051.

2. The State Board of Health shall adopt regulations prescribing the contents of the statements required pursuant to this section.

NAC 629.050 Disclosure concerning destruction of records: Title of statement to be posted on Internet by State Board of Health and certain other regulatory boards. A statement required by NRS 629.053 must be titled "Notice to Patients Regarding the Destruction of Health Care Records."